

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>  <b>KAISER ALUMINUM CORPORATION,</b> <b>A Delaware Corporation, <i>et al.</i>,</b>  <b>Debtors.</b>	<b>Chapter 11</b>  <b>Bankruptcy Case No. 02-10429 (JKF)</b>
<b>PUBLIC UTILITY NO. 1 OF CLARK COUNTY, d/b/a CLARK PUBLIC UTILITIES,</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>KAISER ALUMINUM &amp; CHEMICAL CORPORATION,</b>  <b>Defendant.</b>	<b>Civil Action 05-836-JJF</b>   <b>ORAL ARGUMENT REQUESTED</b>

**REQUEST OF CLARK PUBLIC UTILITIES TO REOPEN CASE AND  
RENEWAL OF MOTION TO WITHDRAW THE REFERENCE**

Public Utility District No. 1 of Clark County d/b/a Clark Public Utilities (“Clark”), pursuant to this Court's Order entered on April 12, 2006 in Case No. 05-836-JJF (Docket No. 25) (the “Order”), respectfully requests (the “Request”) that the United States District Court for the District of Delaware (the “District Court”) reopen Case No. 05-836-JJF and lift the stay of proceedings in that case, and hereby renews its Motion to Withdraw the Reference of the Debtors' Motion for an Order Disallowing Claims Filed by Clark Public Utilities from the United States Bankruptcy Court for the District of Delaware (Docket No. 1) (copy attached as Exh. 1, the “Motion to Withdraw the Reference”) of the proceeding commenced by debtor and requests that this Court withdraw the reference of jurisdiction to the Bankruptcy Court so that Kaiser Aluminum and Chemical Corporation's Motion for an Order Disallowing Claims Filed by Clark

Public Utilities, filed on October 10, 2005 (Docket No. 7480 in Bankruptcy Case No 02-10429 (JKF)) (copy attached as Exh. 2, the "Claims Objection") will be heard and ruled upon, or referred to FERC, by the District Court based on the reasons set forth in the Motion to Withdraw the Reference. In support of its Request, Clark respectfully states as follows:

### **I. BACKGROUND**

On February 12, 2002, Kaiser commenced bankruptcy case number 02-10429 (JKF) (the "Bankruptcy Case") by filing voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). On January 30, 2003, Clark asserted two proofs of claim in the Bankruptcy Case. (Bankruptcy Case Docket No. 8017). The proofs of claim relate to Clark's purchase of Kaiser's surplus electricity for the months of August and September 2001. (*Id.*).

On October 10, 2005, Kaiser filed its Verified Motion of Debtor and Debtor in Possession Kaiser Aluminum & Chemical Corporation for an Order Disallowing Claims Filed by Clark Public Utilities (Bankruptcy Case Docket No. 7480) asserting that Clark's claims were barred by res judicata based on a prior FERC proceeding.

On October 24, 2005, Clark filed in the Bankruptcy Case its (i) Motion to Withdraw the Reference of the Debtors' Motion for an Order Disallowing Claims Filed by Clark Public Utilities from the United States Bankruptcy Court for the District of Delaware (Bankruptcy Case Docket No. 7572) (copy attached as Exh. 3, the "Original Motion to Withdraw the Reference"); and (ii) Respondent's Brief in Support of Motion to Withdraw the Reference of the Debtors' Motion for an Order Disallowing Claims Filed by Clark Public Utilities from the United States Bankruptcy Court for the District of Delaware (Bankruptcy Case Docket Nos. 7583 and 7584)

(copy attached as Exh. 4, the "Supporting Brief"),<sup>1</sup> asserting that FERC should be the entity to decide Clark's claims of violations of the Federal Power Act. On November 14, 2005, the Bankruptcy Court conducted a hearing and, at that time, denied Clark's Original Motion to Withdraw the Reference. The Bankruptcy Court later entered an order based on that ruling. (Bankruptcy Case Docket No. 7804).

On December 5, 2005, Clark commenced Case No. 05-836-JJF when it filed its Motion to Withdraw the Reference with this Court seeking review of the Bankruptcy Court's order denying the Original Motion to Withdraw the Reference. On April 12, 2006, this Court entered the Order denying the Motion to Withdraw the Reference with leave to renew. (Docket No. 25). The Court also imposed a stay on proceedings and administratively closed Case No. 05-836-JJF with leave to reopen upon the written request of any party. (*Id.*). Additionally and as noted in the Order, the Court indicated at the hearing held on January 11, 2006 that "if [Clark] appealed an adverse decision of the Bankruptcy Court, the Court would then choose either to decide the pending motion to withdraw the reference or allow an appeal of the Bankruptcy Court's decision." (*Id.*).

As of the filing of this Request, Clark has appealed an adverse decision by the Bankruptcy Court. On March 7, 2006, the Bankruptcy Court entered its Order (I) Granting Motion of Debtor and Debtor in Possession Kaiser Aluminum & Chemical Corporation for Summary Judgment Regarding its Verified Motion for an Order Disallowing Claims Filed by Clark Public Utilities and (II) Disallowing Claims Filed by Clark Public Utilities (Bankruptcy Case Docket No. 8371) (the "Adverse Decision") granting summary judgment in favor of Kaiser

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<sup>1</sup> Certain of the exhibits attached to the Supporting Brief as originally filed in the Bankruptcy Case (the "Excluded Exhibits") are not attached hereto due to the voluminous nature of the Excluded Exhibits. The Excluded Exhibits will be made available to a party in interest upon written request to counsel for Clark. Although the Excluded Exhibits are not attached hereto, the Supporting Brief is hereby incorporated by reference in its entirety for all purposes, including the Excluded Exhibits.

and disallowing Clark's claims in their entirety.

On April 13, 2006, Clark commenced Civil Action No. 06-247-JJF by filing its notice of appeal seeking review of the Bankruptcy Court's Adverse Decision. This appeal is currently pending before this Court. Clark filed its opening brief on August 30, 2006 (Case No. 06-247-JJF, Docket No. 7) (copy attached as Exh. 5, "Clark's Opening Brief"). Accordingly, Clark files this Request seeking to reopen Case No. 05-836-JJF and renewing its Motion to Withdraw the Reference. As set forth in Clark's Opening Brief, the bankruptcy court lacks jurisdiction over Clark's claims against Kaiser and the claims must be determined by the Federal Energy Regulatory Commission ("FERC"). *See* Clark's Opening Brief at § I. Accordingly, the reference to the bankruptcy court of the above identified matters should be withdrawn and these matters should be referred to FERC for final determination.

## **II. JURISDICTION**

This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1334(b) and Federal Rule of Bankruptcy Procedure 5011(a) which states that “a motion for withdrawal of a case or proceeding shall be heard by a district judge.”

## **III. RELIEF REQUESTED**

Based on the foregoing, Clark requests that this Court (i) reopen Case No. 05-836-JJF, (ii) lift the stay of proceedings in Case No. 05-836-JJF, and (iii) withdraw the reference of jurisdiction to the Bankruptcy Court so that the Claims Objection will be heard and ruled upon, or referred to FERC, by the District Court based on the reasons set forth in Clark's Motion to Withdraw the Reference and Clark's Opening Brief. Clark hereby adopts and incorporates by reference each of the following in its entirety for all purposes and renews its request for relief as set forth therein: (i) the Motion to Withdraw the Reference; (ii) the Original Motion to Withdraw

the Reference; (iii) the Supporting Briefs; and (iv) Clark's Opening Brief.

According to the terms of the Order, this case may be reopened pursuant to the written request of any party. Furthermore, Clark has appealed an adverse ruling by the Bankruptcy Court and, according to the Order, the Court should now decide whether to decide the pending motion to withdraw the reference or allow an appeal of the Bankruptcy Court's decision. Accordingly, Clark submits its Request that the Case No. 05-836-JJF be reopened and renews its Motion to Withdraw the Reference.

#### **IV. CONCLUSION & PRAYER**

For all of the foregoing reasons, Clark respectfully requests entry of an Order: (i) reopening Case No. 05-836-JJF; (ii) lifting the stay of proceedings in Case No. 05-836-JJF; (iii) withdrawing the reference to the Bankruptcy Court of the Claims Objection; and (iv) granting such other relief as is just and proper.

Dated: September 13, 2006  
Wilmington, Delaware

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